

1 KEKER & VAN NEST, LLP
2 DARALYN J. DURIE - #169825
3 CHRISTA M. ANDERSON - #184325
4 ROSE DARLING - #243893
710 Sansome Street
San Francisco, CA 94111-1704
Telephone: (415) 391-5400
Facsimile: (415) 397-7188

5 Attorneys for Defendants
6 GAP INTERNATIONAL SALES, INC., THE GAP, INC.,
BANANA REPUBLIC, LLC, and OLD NAVY, LLC

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 GABANA GULF DISTRIBUTION, LTD., a
12 company organized under the laws of the
United Kingdom, and GABANA
13 DISTRIBUTION, LTD., a company organized
under the laws of the United Kingdom,

14 Plaintiffs,

15 v.

16 GAP INTERNATIONAL SALES, INC., a
17 Delaware corporation, THE GAP, INC., a
Delaware corporation, BANANA REPUBLIC,
18 LLC, a Delaware limited liability company,
and OLD NAVY, LLC, a Delaware limited
19 liability company,

20 Defendants.

Case No. C 06 2584 CRB

~~[PROPOSED]~~ PROTECTIVE ORDER

Date Comp. Filed: April 14, 2006

Trial Date: December 3, 2007

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[PROPOSED] PROTECTIVE ORDER
CASE NO. C 06-2584 CRB

1 WHEREAS, certain documents and information have been and may be sought, produced
2 or exhibited by and between the parties to this litigation which relate to the parties' financial
3 information, competitive information, personnel information or other kinds of commercially
4 sensitive information which the party making the production deems confidential; and

5 WHEREAS, it has been agreed by and among the parties through their respective
6 counsel, that, to expedite the flow of discovery material and to preserve the confidentiality of
7 certain documents and information, a protective order should be entered by the Court; and

8 WHEREAS, the court has reviewed the terms and conditions of this Protective Order
9 submitted by the parties,

10 IT IS HEREBY ORDERED THAT:

11 1. This Protective Order shall govern all documents, the information contained
12 therein, and all other information produced or disclosed during this litigation whether revealed in
13 a document, deposition, other testimony, discovery response or otherwise, by any party in this
14 proceeding (the "supplying party") to any other party (the "receiving party"), when same is
15 designated in accordance with the procedures set forth herein. This Protective Order is binding
16 upon the parties including their respective corporate parents, subsidiaries and affiliates and their
17 respective attorneys, agents, representatives officers and employees and others as set forth in this
18 Protective Order.

19 2. Any supplying party shall have the right to identify and designate as
20 "Confidential" or "Highly Confidential" any document or other materials it produces or provides
21 (whether pursuant to court order, notice or subpoena or by agreement), or any testimony given in
22 this litigation, which testimony or discovery material is believed in good faith by that supplying
23 party to constitute, reflect or disclose its confidential and proprietary information, as those terms
24 are understood under Rule 26(c)(7) of the Federal Rules of Civil Procedure ("Designated
25 Material").

26 3. "Confidential Information" as used herein means any Designated Material that is
27 designated pursuant to this Protective Order as "Confidential" by the supplying party, whether it
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1 is a document, information contained in a document, information revealed during a deposition or
 2 other testimony, information revealed in an interrogatory answer or information otherwise
 3 revealed. In designating material as "Confidential," the supplying party will make such
 4 designation only as to that material that it in good faith believes to be entitled to confidential
 5 treatment.

6 4. Specific documents and interrogatory answers produced by a supplying party
 7 shall, if appropriate, be designated as "Confidential" by marking the first page of the document
 8 and each subsequent page thereof containing Confidential Information with the legend:

9 **CONFIDENTIAL**

10 5. Information disclosed at a deposition taken in connection with this proceeding
 11 may be designated as "Confidential" as follows:

12 (a) A supplying party (or its counsel) may designate testimony, given by it or
 13 its present or former employee(s), officer(s), director(s), partner(s), representative(s), or
 14 any expert(s), as "Confidential" on the record during the taking of the deposition, in
 15 which case the stenographic employee or court reporter recording or transcribing such
 16 testimony shall be directed to bind any transcript page(s) containing Confidential
 17 Information separately and apart from any transcript page(s) containing no such
 18 Confidential information; or

19 (b) A supplying party (or its counsel) may notify all other parties in writing,
 20 within twenty (20) calendar days of receipt of the transcript of a deposition, given by it or
 21 its present or former employee(s), its officer(s), director(s), partner(s), representative(s),
 22 or any expert(s), of specific pages and lines of the transcript which are designated as
 23 "Confidential," whereupon each party shall attach a copy of such written designation to
 24 the face of the transcript and each copy thereof in that party's possession, custody or
 25 control. To facilitate the designation of Confidential Information, all transcripts of
 26 depositions shall be treated, in their entirety, as Confidential Information for a period of
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1 twenty (20) calendar days following delivery by the court reporter of certified transcripts
 2 to all parties.

3 6. All "Confidential Information" produced or exchanged in the course of this
 4 litigation shall be held in confidence by each person to whom it is disclosed, and that person
 5 shall use the "Confidential Information" for the purposes of this litigation only.

6 7. Except with the prior written consent of the other parties, or upon prior order of
 7 this Court obtained upon notice to opposing counsel, "Confidential Information" shall not be
 8 disclosed to any person other than:

9 (a) counsel for the respective parties to this litigation, including in-house counsel and
 10 co-counsel retained for this litigation;

11 (b) employees of such counsel;

12 (c) individual parties, and any officer or employee of a party, to the extent deemed
 13 necessary by counsel for the prosecution or defense of this litigation. Each individual receiving
 14 "Confidential Information" shall execute a copy of the Certification annexed to this Order which
 15 shall be retained by counsel to the party so disclosing the "Confidential Information."

16 (d) consultants or expert witnesses retained for the prosecution or defense of this
 17 litigation, provided that the disclosure of "Confidential Information" shall be proceeded by the
 18 signing of the Certification annexed to this Order as Exhibit A and which shall be retained by
 19 counsel to the party so disclosing the "Confidential Information" and made available for
 20 inspection by opposing counsel during the pendency or after the termination of the action only
 21 upon good cause shown and upon order of the Court before being shown or given any
 22 "Confidential Information";

23 (e) any authors or recipients of the "Confidential Information";

24 (f) the Court, Court personnel, and court reporters; and

25 (g) witnesses (other than persons described in paragraph 7(e)). A witness shall sign
 26 the Certification before being shown a confidential document. "Confidential Information" may
 27 be disclosed to a witness who will not sign the Certification only in a deposition at which the
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1 party who designated the "Confidential Information" is represented or has been given notice that
 2 "Confidential Information" produced by the party may be used. At the request of any party, the
 3 portion of the deposition transcript involving the "Confidential Information" shall be designated
 4 "Confidential" pursuant to paragraph 5 above. Witnesses shown "Confidential Information"
 5 shall not be allowed to retain copies.

6 8. It is possible that there may be certain discrete categories of extremely sensitive
 7 confidential and/or proprietary information, the disclosure of which, even if limited to the
 8 persons listed in paragraph 7 above, may compromise and/or jeopardize the supplying party's
 9 business interests ("Highly-Confidential Information") such that the supplying party may deem
 10 such Highly-Confidential Information to require greater limitations on disclosure than are set
 11 forth in paragraph 7 above. Either party may designate as "Highly Confidential" the following
 12 information: (i) strategic planning documents concerning the supplying party's international
 13 business; (ii) agreements with third parties in which the supplying party is bound by a
 14 nondisclosure or other similar confidentiality agreement, including any documents related to
 15 such agreements; (iii) non-public financial documents related to sales and performance; and (iv)
 16 board minutes. The supplying party may designate Highly-Confidential Information by marking
 17 the first page of the document or interrogatory answer and each subsequent page thereof
 18 containing Highly-Confidential Information with the legend:

19 HIGHLY CONFIDENTIAL

20 9. If either party believes that information not falling within the four categories set
 21 forth above in paragraph 8 nevertheless constitutes Highly Confidential Information, it shall
 22 provisionally produce the information to the opposing counsel. If the opposing counsel agrees
 23 that the information is highly confidential, the supplying party may produce copies of the
 24 document or documents designated as such. If, after conferring with the supplying party in good
 25 faith, opposing counsel disagrees that the information is highly confidential, the supplying party
 26 may seek relief from the Court in the form of a motion for protective order as to the information
 27 in question to be filed within ten days of receiving notice from the opposing counsel that it
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1 would not agree to the highly confidential designation. If no such relief is sought within ten
 2 days, the information shall be treated as "Confidential" as provided herein. Between the time of
 3 filing and the time of disposition of any such motion, the information shall be treated as Highly
 4 Confidential Information.

5 10. All the provisions set forth above applicable to Confidential Information shall
 6 apply equally to Highly-Confidential Information, except that disclosure of Highly-Confidential
 7 Information by the receiving party shall be limited to the following persons:

- 8 (a) outside counsel for the respective parties to this litigation;
- 9 (b) employees of such outside counsel;
- 10 (c) consultants or expert witnesses retained for the prosecution or defense of this
 11 litigation, provided that the disclosure of "Highly-Confidential Information" shall be proceeded
 12 by the signing of the Certification annexed to this Order as Exhibit A and shall occur only after
 13 disclosure by email or facsimile to the opposing party the identity of such person two (2)
 14 business days in advance to afford such opposing party the opportunity to seek relief if it
 15 believes any to be appropriate; if such party objects within such time frame, it shall, within five
 16 (5) calendar days seek such relief, pending which no disclosure shall occur;
- 17 (d) any authors or recipients of the "Highly-Confidential Information"; and
- 18 (e) the Court, Court personnel, and court reporters.

19 11. For applications and motions to the Court on which a party submits
 20 "Confidential" or "Highly Confidential" Information, all documents and chamber copies
 21 containing "Confidential" or "Highly Confidential" Information which are submitted to the
 22 Court shall be filed with the Court in sealed envelopes or other appropriate sealed containers.
 23 On the outside of the envelopes, a copy of the first page of the document shall be attached. If
 24 "Confidential" or "Highly Confidential" Information is included in the first page attached to the
 25 outside of the envelopes, it may be deleted from the outside copy. The word
 26 "CONFIDENTIAL" shall be stamped on the envelope and a statement substantially in the
 27 following form shall also be printed on the envelope:
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1 **This envelope is sealed pursuant to Order of the Court, contains Confidential**
 2 **Information and is not to be opened or the contents revealed, except by**
 3 **Order of the Court or agreement by the parties.**

4 12. A party may designate as "Confidential" or "Highly Confidential" documents or
 5 discovery materials produced by a non-party by providing written notice to all parties of the
 6 relevant document numbers or other identification within thirty (30) days after receiving such
 7 documents or discovery materials. Any party or non-party may voluntarily disclose to others
 8 without restriction any information designated by that party or non-party as confidential or
 9 Highly Confidential although a document may lose its confidential status if it is made public.

10 13. If a party contends that any material is not entitled to confidential treatment, such
 11 party may at any time give written notice to the party or non-party who designated the material.
 12 The party or non-party who designated the material shall have twenty-five (25) days from the
 13 receipt of such written notice to apply to the Court for an order designating the material as
 14 confidential. The party or non-party seeking to uphold or to support any confidentiality
 15 designation that is challenged shall have the burden of establishing that the document or material
 16 is entitled to protection.

17 14. Notwithstanding any challenge to the designation of material as "Confidential" or
 18 "Highly Confidential" Information, all documents designated as such shall be treated as such and
 19 shall be subject to the provisions hereof unless and until one of the following occurs:

20 (a) the party or non-party who claims that the material is "Confidential" or "Highly
 21 Confidential" Information withdraws such designation in writing; or

22 (b) the party or non-party who claims that the material is "Confidential" or "Highly
 23 Confidential" Information fails to apply to the Court for an order designating the material
 24 confidential within the time period specified above after receipt of a written challenge to such
 25 designation; or

26 (c) the Court rules the material is not "Confidential" or "Highly Confidential"
 27 Information.

28 15. All provisions of this Order restricting the communication or use of

1 "Confidential" or "Highly Confidential" Information shall continue to be binding after the
2 conclusion of this action, unless otherwise agreed or ordered. Upon conclusion of the litigation,
3 a party in the possession of "Confidential" or "Highly Confidential" Information, other than that
4 which is contained in pleadings, correspondence, and deposition transcripts, shall either (a)
5 return such documents no later than thirty (30) days after conclusion of this action to counsel for
6 the party or non-party who provided such information, or (b) destroy such documents within the
7 time period upon consent of the party who provided the information and certify in writing within
8 thirty (30) days that the documents have been destroyed.

9 16. The terms of this Order do not preclude, limit, restrict, or otherwise apply to the
10 use of documents at trial.

11 17. Nothing herein shall be deemed to waive any applicable privilege or work product
12 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material
13 protected by privilege or work product protection.
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1 18. Any witness or other person, firm or entity from which discovery is sought may
2 be informed of and may obtain the protection of this Order by written advice to the parties'
3 respective counsel or by oral advice at the time of any deposition or similar proceeding.

4 Respectfully submitted,

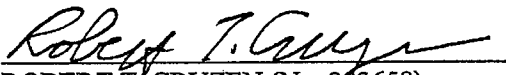
5 Dated: November 14, 2006

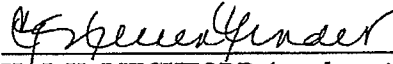
KEKER & VAN NEST, LLP

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8 By: 

ROSE DARLING (No. 243893)
Attorneys for Defendants
GAP INTERNATIONAL SALES, INC., THE
GAP, INC., BANANA REPUBLIC, LLC, and
OLD NAVY, LLC

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11 Dated: November 9, 2006


ROBERT T. CRUZEN (No. 203658)
Email: mglick@howardrice.com
ROBERT T. CRUZEN (No. 203658)
Email: rcruzen@howardrice.com
SHAUDY DANAYE-ELMI (No. 242083)
HOWARD RICE NEMEROVSKI CANADY
FALK & RABKIN
A Professional Corporation
Three Embarcadero Center, 7th Floor
San Francisco, California 94111-4024
Telephone: 415/434-1600
Facsimile: 415/217-5910


HAL K. LITCHFORD (*pro hac vice*)
G. STEVEN FENDER (*pro hac vice*)
LITCHFORD & CHRISTOPHER
Professional Association
Bank of America Center
390 North Orange Avenue
Post Office Box 1549
Orlando, Florida 32802-1549
Telephone: 407/422-6600
Facsimile: 407/841-0325
Attorneys for Plaintiffs
GABANA GULF DISTRIBUTION, LTD., and
GABANA DISTRIBUTION, LTD.

Provided that all requests to file materials under seal comply with Local Rule
79-5. CRB

THE FOREGOING STIPULATION IS APPROVED AND IS SO ORDERED.

Dated:

November 28, 2006

Charles R. Breyer
United States District Judge

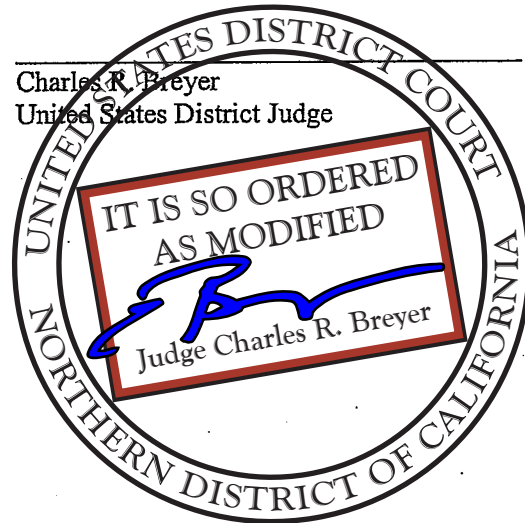


EXHIBIT A
CERTIFICATION

I hereby acknowledge that on _____ I read the Protective Order
filed in the above-captioned action, and that I understand the terms thereof and agree to be bound
thereby. I further agree to submit to the jurisdiction of the Court and understand that the Court
may impose sanctions for any violation of the Protective Order.

Name (typed or printed)

Address

Signature

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